87-424

Supreme Court, U.S.
FILED
AUG 12 1987
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO._____

THE UNITED STATES
SUPREME COURT

OCTOBER TERM, 1987

WILLIAM C. GAINEY,
Plaintiff - Appellant

V.

GILMAN PAPER COMPANY, INC.,
and UNITED PAPERWORKERS
INTERNATIONAL UNION,
Defendants - Appellees.

PETITION FOR WRIT OF CERTIORARI FROM THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION

Robert W. Harrison, Jr.
Counsel of Record for Petitioner
Post Office Drawer Eight
Folkston, Georgia 31537

Tom J. Crosby
Counsel for Petitioner
Post Office Drawer Eight
Folkston, Georgia 31537

The questions presented for review are as follows:

1. Must a former employee bring an action against his former employer within six months after the employer summarily terminates all insurance coverages on the employee?

2. Must a member of a labor union bring an action against his union within six months after he becomes aware of the fact that the union misrepresented to him the extent of insurance benefits he would receive under a ratified labor agreement?

3. Must a party bring an action against his former employer and former union within six months after he learns of fraud and conspiracy to defraud perpetrated against him by the latter in obtaining ratification of a labor agreement?

The names of all parties to the proceedings in the lower Courts are contained in the caption of this Petition.

TABLE OF CONTENTS

	Page
Questions presented	1
Names of Parties	2
Previous Opinions	4
Statement of Jurisdiction	4
Statement of the Case	5-7
Argument	8-9

TABLE OF AUTHORITIES

	Page
Del Costella V. International Brotherhood of Teamsters	7
International Brotherhood of Electrical Workers, AFL-CIO, et al. V. Hechler	8

3.

The opinion of the United States District Court, Southern District of Georiga, is appended. The Eleventh Circuit Court of Appeals affirmed without opinion, its Order also being appended.

4.

The Order of the District Court is dated and entered on July 7, 1987. The Order of the Eleventh Circuit Court of Appeals, which is the subject of this Petition, is dated May 14, 1987.

5.

Jurisdiction is vested in this Court under the provisions of Title 28, Section 1254, U.S.C.

6.

There are no constitutional provisions, treaties, statutes, ordinances or regulations involved in this case.

7.

Statement of the case:

Appellant Gainey was employed by Gilman Paper Company for many years when on or about December 23, 1983 he was no longer able to continue his employment because of physical disabilities. Subsequent to his last date of employment, Gainey tendered periodic payments to Gilman to keep his health insurance in force which he had during the period of his employment. Soon after April 21, 1984, Gainey's wife went to Gilman to make the premium payment and was told that Gilman had terminated all of Gainey's coverage. He subsequently further learned that "Accident & Sickness Insurance" benefits were limited to 26 weeks.

Gainey brought suit on March 11, 1986 in state court against Gilman and against

his former union, United Paperworker's International Union. The Complaint was lodged in three Counts: Count One against Gilman for unilaterally terminating his health coverage; Count Two against the Union for failure to reveal the limitation of the accident and sickness insurance prior to the time a labor agreement was ratified; and Count Three against Gilman and the Union for fraud and conspiracy to perpetrate fraud against him in obtaining ratification of the labor agreement.

Defendant Gilman removed the case to the Federal Court, without objection from Plaintiff, on grounds that Federal law pre-empted State Law. Each defendant responded to the Complaint by filing a Motion to Dismiss contending the nature of the causes of action were governed by a six month statute of limitation. The Dis-

trict Court agreed and dismissed the case holding that this Court's decision in Del Costella v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S. Ct. 2281 76 L. Ed. 2d 476 (1983) applied and the action was therefore time barred.

Gainey appealed this finding to the Eleventh Circuit Court of Appeals which affirmed without opinion on May 14, 1987.

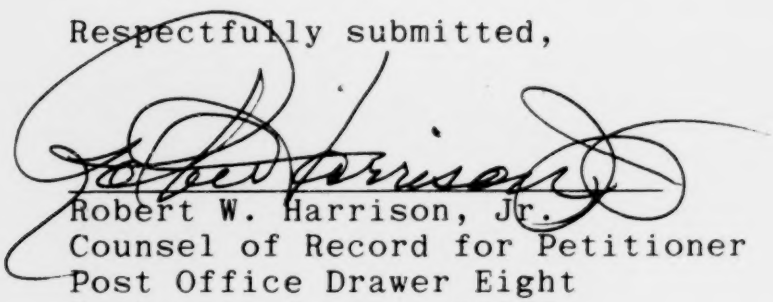
8.

No judgment of a State Court is applicable to this case.

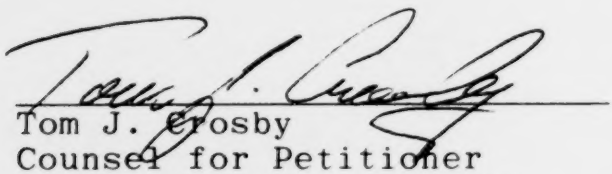
Certiorari should issue for the following reasons: The nature of Gainey's claim is such that they are sufficiently independent of the collective-baragining agreement to withstand the pre-emptive force of Section 301 of the Labor Management Relations Act, and therefore, are not subject to a six month period of limitation. This Court's recent decision in International Brotherhood of Electrical Workers, AFL-CIO, et al. v. Hechler, 481 US _____, 95 L Ed 2nd 791, 107 S Ct_____, (No. 85-1360) (May 26, 1987) sets forth the criteria whereby Courts are to determine if a case falls within the six month period of limitation. The lower Courts did not have the benefit of this most recent decision of this Court, and for that

reason we respectfully ask that Certiorari issue.

Respectfully submitted,



Robert W. Harrison, Jr.
Counsel of Record for Petitioner
Post Office Drawer Eight
Folkston, Georgia 31537



Tom J. Crosby
Counsel for Petitioner
Post Office Drawer Eight
Folkston, Georgia 31537

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

WILLIAM C. GAINEY,	:	**CIVIL ACTION**
Plaintiff,	:	**No. 286-063**
V.	:	
GILMAN PAPER COMPANY and UNITED PAPERWORKERS INTERNATIONAL UNION,	:	
Defendants.		

O R D E R

This action arises out of the termination by defendant Gilman Paper Company ("Gilman") of the insurance coverage of plaintiff, William Gainey, a disabled former employee. In addition to Gilman, Gainey has named the United Paperworkers International Union ("Union") as a defendant.

Gilman terminated Gainey's coverage effective April 24, 1984, and Gainey learned

of the termination shortly afterward. Complaint at ¶ 6. Gainey filed this action on March 11, 1986, almost two years after the termination of his benefits. Although Gainey alleges that the Union ignored all requests by him and his attorney for assistance, he does not allege that the Union led him to believe that it was taking, or would take, any action on his behalf. Id. at Count II.

Presently before the Court are the motions of the defendants to dismiss the complaint as time-barred. The Union seeks to dismiss the complaint on the additional ground of failure to exhaust contractual remedies. Gilman seeks to be awarded its costs, including attorney fees, in defending the action.

The Complaint is in three counts. Count I is a claim against Gilman for wrongfully terminating Gainey's insurance

coverage. Count II is a claim against the Union for deliberately failing to disclose the limitations on the insurance coverage provided for in the collective-bargaining agreement prior to ratification of the agreement. Count III is a conspiracy claim against both defendants.

Defendants characterize this action as a hybrid § 301/unfair-representation action. They argue that the complaint is clearly barred on its face under the six-month statute of limitation of 29 U.S.C. § 160(b) (1982), which was held to apply to such actions by the United States Supreme Court in Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983). Gainey, however, maintains that the action is not a hybrid § 301/unfair-representation claim.

First, Gainey attempts to distinguish

factually his claim against Gilman from the claims against the employers of Del Costello. Despite those differences, Gainey's claim for wrongful termination of insurance coverage revolves around contract interpretation. As such, the claim is either an action under § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 141 et seq. (1982), or it is preempted. Allis-Chalmers Corp. v. Lueck, 105 S.Ct. 1904, 85 L.Ed.2d 206, 219-220 (1985).

Gainey also takes the position that his claim against the Union is not a breach of the duty of the fair representation claim, because the claim is not based on the Union's failure to file a claim on his behalf. Rather, Gilman states that the claim against the Union is based on the Union's failure to "reveal the full context and limitations of the insurance coverage under the collective-bargaining a-

greement, prior to ratification of the agreement." Brief in Opposition, at 3.

Gainey apparently believes that the duty of fair representation applies only to a union's action, or inaction, in processing grievances. The duty, however, also applies to a union's negotiation and administration of the collective-bargaining agreement. Anderson v. United Paperworkers International Union, 641 F.2d 574, 577-78 (8th Cir. 1981) (Union representative's knowing misrepresentation concerning special security fund for severance pay, made to employees to induce ratification of collective-bargaining agreement, violated duty of fair representation); Deboles v. Trans World Airlines, 552 F.2d 1005, 1014, 1017-18 (3d Cir.) cert. denied, 434 U.S. 837 (1977) (union misstatements concering its efforts to secure certain seniority rights breached duty of fair re-

presentation); Retana v. Apartment, Motel, Hotel & Elevator Operators Union, 453 F.2d 1018, 1023-25 (9th Cir. 1972) (allegations of failure of union to provide copy of collective-bargaining agreement in Spanish and failure to explain members' rights in Spanish, when substantial number of members spoke only in Spanish, state claim for breach of duty of fair representation). Count II of Gainey's complaint, therefore, may well state a claim for relief for breach of the duty of fair representation. If it were so characterized, then Counts I and II would be hybrid § 301/ unfair-representation claims and barred under the applicable six-month statute of limitation. See Del Costello, supra. The conspiracy count would also be governed by the same six-month statute of limitation, see Muldoon v. Service Employees International Union, Local 252, 609 F.Supp. 842, 845-46 (E.D.Pa.

1985); Creamer v. General Teamsters Local Union 326, 579 F.Supp. 1288 (D.Del. 1984), and would be time-barred.

Gainey's characterization of Count II of the complaint as a state law claim rather than a breach of fair representation claim is of no avail. A state law claim for intentional failure to reveal terms of the collective-bargaining agreement prior to ratification, if such a claim exists, would be preempted. See Farmer v. United Brotherhood of Carpenters and Joiners of America, Local 25, 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977); Dazzo v. Local 259, United Automobile Aerospace and Agricultural Implement Workers of American, 448 F.Supp. 799, 801-02 (D.N.Y. 1978). The remaining counts of the complaint would still be governed by the six-month statute of limitation of § 160(b), see Fiske v. Lockheed-Georgia Co., 568 F.Supp. 590, 595 (N.D.

Ga. 1983); Muldoon, supra, and would have to be dismissed as time-barred.

Based on the foregoing discussion, regardless of how the three counts of the complaint are characterized, each count must be dismissed, either as barred by the statute of limitations or as preempted. It is not necessary, therfore, to address the Union's argument that the complaint must be dismissed as to it for failure to exhaust contractual remedies. As for Gilman's requests for costs, it seems to this Court that, if counsel for Plaintiff had made reasonable inquiry into the law, he would have known that dismissal of this action was inevitable. The brief filed by plaintiff's counsel in opposition to the motins of the defendants cites no cases dealing with the statute of limitations or preemption issues and makes no argument for a change in existing law. Nevertheless,

the Court deems the best course to be to afford plaintiff's counsel the opportunity to show cause in writing why sanctions should not be imposed against him under Rule 11 of the Federal Rules of Civil Procedure.

Accordingly, the motions of both defendants to dismiss the complaint are GRANTED and the action is hereby dismissed with prejudice. The Clerk of Court is directed to enter an appropriate judgment of dismissal.

IT IS FURTHER ORDERED that counsel for the plaintiff shall show cause, in writing, within fourteen (14) days of the date of entry of this Order, why sanctions should not be imposed against him under Fed.R.Civ.P. 11.

SO ORDERED, this 7th day of July, 1986.

Anthony A. Alaimo
CHIEF JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

BEST AVAILABLE COPY

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

WILLIAM C. GAINEY **V.** **GILMAN PAPER COMPANY and UNITED PAPER-WORKERS INTERNATIONAL UNION.**	**DOCKET NUMBER** **CV286-0063** **Judge A.A. Alaimo**

Decision by Court. This action came on motion before the Court with the Judge (magistrate) named above presiding. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that in accordance with the Court's Order dated July 7, 1986, defendants Gilman Paper Company and United Paperworkers International Union motions to dismiss the complaint are granted and the action is dismissed with prejudice.

Clerk
Henry R. Crumley, Jr.

Date
July 8, 1986

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-8602
Non-Argument Calendar

WILLIAM C. GAINEY,

Plaintiff-Appellant,

versus

GILMAN PAPER COMPANY and UNITED PAPERWORKERS INTERNATIONAL UNION,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Georgia

(May 14, 1987)

Before GODBOLD, VANCE and JOHNSON, Circuit Judges.

PER CURIAM:

The judgment of the district court is affirmed for the reasons stated in its order made and entered on July 7, 1986. AFFIRMED.